

REMARKS

Claims 23-32 are now pending in the application. Applicant would like to thank the Examiner for the courtesies extended to applicant's representative during a telephone interview on June 24, 2004. During that interview, the Examiner indicated that the arguments as set forth below would define patentable subject matter over the prior art reference (U.S. Patent No. 6,467,684) cited in the Office Action, but that amendments to the claims may also necessitate further consideration. No agreement was reached as to the other pending rejections. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 101

Claims 18-22 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. This rejection is respectfully traversed.

Claims 18-22 have been cancelled from the present application, thereby rendering this rejection moot. Nonetheless, to the extent that the Examiner applies a similar rationale to the currently pending claims, Applicant briefly addresses this rejection.

First, Applicant asserts that the Examiner's "two prong" test is inconsistent with USPTO examination procedures as well as current Federal Circuit case. Applicant asserts that there is no technological arts requirement. Rather, the proper test is merely whether the claimed subject matter produces a useful, concrete and tangible result. In the present application, Applicant's invention provides an innovative purchase card that

enables a cardholder to transact a purchase with a retailer. Transacting a purchase is a useful, concrete and tangible result that places the claimed subject matter within the realm of statutory subject matter.

Furthermore, Applicant asserts that use of a purchase card provides a basis in the technological arts. Broadly speaking, technology pertains to things derived by man, and thus should not be narrowly construed to involve the use of a computer. A purchase card or other similar financial products have been the subject of issued U.S. Patents, and thus qualifies as statutory subject matter even under the Examiner's two-prong test.

REJECTION UNDER 35 U.S.C. § 103

Claims 18-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable anticipated over U.S. Patent No. 6,145,741 (Wisdom). This rejection is respectfully traversed.

It is believed that the pending claims are patentably distinct over Wisdom. In order to expedite prosecution, Applicant has submitted a declaration in accordance with 37 C.F.R. §1.131 which establishes the conception of the Applicant's invention in the United States prior to April 27, 1999, which is the filing date of the Wisdom reference. However, the Examiner asserts that the evidence submitted is insufficient to establish the conception of the invention prior to the effective date of the Wisdom reference. Specifically, the Examiner asserts that the documentary evidence does not show the step involving the purchasing intermediary. Although applicant disagrees with this assertion as explained in response to previous Actions, Applicant notes that the newly presented

claims do not include a purchase intermediary, thereby rendering the rejection moot. Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection.

Claims 18-22 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,467,684 (Fite). This rejection is respectfully traversed.

Fite is directed generally to a pre-paid card system. Numerous distinctions exist between Applicant's invention and Fite. For example, Fite is closed system which requires the purchaser to transact a purchase with a registered merchant (see col. 3, lines 54-57). In addition, Fite requires the purchaser to provide at least some identifying information, such as a personal identification number (PIN), to conduct a purchase transaction.

On the other hand, Applicant's invention is directed to an innovative purchase card that enables a purchaser to transact an anonymous purchase. Of note, Claim 22 recites that "purchase card is a bearer instrument [that] does not identify the person who acquired the purchase card ... wherein the purchaser is not required to provide any identifying information, including a personal identification number (PIN), to conduct the transaction" in combination with the other elements of the claim. Basis for this aspect of the present invention may be found throughout the application as originally filed, including on page 11 of the specification. In this way, Applicant's claimed invention is easily transferable. Merely possession of the purchase card enables its bearer to transact a purchase. Thus, this type of purchase card is particularly suitable for gift giving, where knowledge of a PIN would be cumbersome. Therefore, it is respectfully

submitted that Applicant's claimed invention defines patentable subject matter over Fite. Accordingly, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection.


CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: SEPT. 27, 2004

By: 
Timothy D. MacIntyre
Reg. No. 42,824

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

TDM/mas